

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

JOSEPH J. FRATUS, STEPHANIE)	
L. FRATUS and CARISSA M.)	
FRATUS, p.p.a. STEPHANIE L.)	
FRATUS)	
Plaintiffs)	
)	
v.)	
)	C.A. No. 94-0385L
REPUBLIC WESTERN INSURANCE)	
COMPANY)	
Defendant)	

MEMORANDUM AND ORDER

Ronald R. Lagueux, Chief Judge.

Joseph Fratus, Stephanie Fratus and Carissa Fratus ("plaintiffs") seek to recover under three insurance policies issued by Republic Western Insurance Company ("defendant"). This case has returned to this Court on remand from the First Circuit. See Fratus v. Republic W. Ins. Co., 147 F.3d 25 (1st Cir. 1998).

Defendant moved for summary judgment, however, the motion is denied because there is a genuine dispute of material facts.

I. Standard and Background

The standard for summary judgment is well-worn and accepted. See, e.g., Mattias v. Computer Sciences Corp., 34 F. Supp.2d 120, 122-23 (D.R.I. 1999). Briefly, this Court looks to Rule 56(c) of the Federal Rules of Civil Procedure:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of any material fact and that the moving party is entitled to a judgment as a matter of law.

Fed. R. Civ. P. 56(c). The Court must view all evidence and related inferences in the light most favorable to the nonmoving party. See Springfield Terminal Ry. Co. v. Canadian Pac. Ltd., 133 F.3d 103, 106 (1st Cir. 1997).

Joseph Fratus was injured on June 4, 1985 when Joseph Obert ran him down in a truck rented from U-Haul Truck Rental in Worcester, Massachusetts.¹ Defendant insured the truck under Business Auto Policy No. RL-1000 and three broader policies ("the Umbrella Policies"). Defendant paid plaintiffs under Policy No. RL-1000, but they seek coverage under the Umbrella Policies.

The Umbrella Policies have been amended since they were issued. The First Circuit held that Obert was an "insured" within the original wording. See Fratus, 147 F.3d at 31-32. However, the amended language excludes all renters from coverage. See id. at 32. There is a material dispute regarding the date of the amendment, so this Court must hear evidence as to when the amendments were added. See id. at 32-33.

II The Pending Motion

In the pending motion, defendant attempts to avoid that dispute. Defendant argues that Obert contracted away any coverage under the Umbrella Policies when he signed the contract

¹ The facts have been outlined both by the First Circuit and by Senior Judge Francis J. Boyle, who oversaw this case until his retirement. See Fratus, 147 F.3d at 27-28; Fratus v. Republic W. Ins. Co., 963 F. Supp 113, 115 (D.R.I. 1997).

to rent the truck (the "Rental Agreement"). This "cut back," defendant argues, was in a clause on the back page of the Rental Agreement. See Fratus, 147 F.3d at 33 n.11 (noting issue).

At this point, the issue is not appropriate for summary judgment because defendant has not proven what language existed on the Rental Agreement's back page. While the parties have a copy of the signed front page, the back page has been lost. Defendant offers an affidavit from U-Haul executive George R. Olds who says Obert must have signed one of two forms that his company has archived. Both forms include the language that defendant relies upon.

However, this Court cannot decide the case on a mere affidavit where such fundamental questions remain unanswered. This Court must view all evidence in the light most favorable to plaintiff. Plaintiffs has offered no evidence as to what appeared on the back page, but the affidavit's truth depends on Olds' credibility and on the details of what forms U-Haul saves and how Olds searched them. This Court cannot assume that U-Haul's collection is encyclopedic and Olds' search was exhaustive. As such, this Court cannot accept Olds' affidavit - buttressed by no other evidence - as an absolute truth.

A genuine dispute exists as to the text of the Rental Agreement's back page. Olds' testimony may decide the issue, but his affidavit cannot.

CONCLUSION

This Court denies defendant's motion for summary judgment. A bench trial will address at least three disputed issues:

- when the Umbrella Policies were amended
- what language existed on the back of the Rental Agreement
- what was the legal effect of that language on the coverage under the Umbrella Policies

The final issue arose in plaintiffs' objection to this motion. They argue that the back-page language alleged by defendant was too vague to "cut back" the Umbrella Policies' coverage. This Court declines to interpret the contract until it knows what the precise language of the agreement turns out to be.

It is so Ordered.

Ronald R. Lagueux
Chief Judge
April , 1999